



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed in
the Territory of Former Yugoslavia since 1991

Case No. IT-06-90-PT

Date: 18 September 2007

Original: English

IN TRIAL CHAMBER I

Before: Judge Alphons Orie, Presiding
Judge Christine Van Den Wyngaert
Judge Bakone Justice Moloto

Registrar: Mr. Hans Holthuis

Decision of: 18 September 2007

PROSECUTOR

v.

**ANTE GOTOVINA
IVAN ČERMAK
MLADEN MARKAČ**

PUBLIC

**DECISION ON DEFENDANT ANTE GOTOVINA'S
REQUEST FOR CERTIFICATION TO APPEAL THE
TRIAL CHAMBER'S ORDER OF 25 JULY 2007 TO THE
PROSECUTION CONCERNING THE ALLEGED CONFLICT
OF INTEREST OF ATTORNEY GREGORY KEHOE**

The Office of the Prosecutor

Mr. Alan Tieger
Mr. Marks Moore

Counsel for the Accused

Mr. Luka S. Mišetić, Mr. Gregory Kehoe and Mr. Payam Akhavan for Ante Gotovina
Mr. Čedo Prodanović (in transfer) and Ms. Jadranka Sloković (in transfer) for Ivan Čermak
Mr. Goran Mikuličić for Mladen Markač

TRIAL CHAMBER I (“Trial Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”);

BEING SEISED of “Defendant Ante Gotovina’s request for certification to appeal the Trial Chamber’s order of 25 July 2007 to the Prosecution concerning the alleged conflict of interest of attorney Gregory Kehoe”, filed on 1 August 2007 (“Motion”), whereby the Defence of Ante Gotovina requests certification pursuant to Rule 73(B) of the Rules of Procedure and Evidence (“Rules”) to appeal the “Order to the Prosecution concerning the alleged conflict of interest of attorney Gregory Kehoe”, filed on 25 July 2007 (“Order to the Prosecution”);

CONSIDERING the submissions of Defence of Ante Gotovina that “the Appeals Chamber should review the Trial Chamber’s finding that the Registrar ‘erred in the discharge of his duties’ by admitting Mr. Kehoe as counsel to General Gotovina [...] without awaiting the outcome of the Prosecution’s internal review which the Registrar asked the Prosecution to carry out, so as to be able to make an informed decision pursuant to Article 14(C) of the Code [of Professional Conduct for Counsel Appearing Before the International Tribunal] on the basis of all relevant material”, and that “the Appeals Chamber should review the Trial Chamber’s conclusion that the Registrar’s alleged ‘error’ requires the Trial Chamber to open a factual inquiry into Mr. Kehoe’s work for the Prosecution”;¹

NOTING “Ivan Čermak’s and Mladen Markač’s consolidated response to Prosecution’s motion for clarification, reconsideration or certification to appeal and Ante Gotovina’s request for certification to appeal”, filed on 10 August 2007 (“Response”);

NOTING the “Defendant Ante Gotovina’s motion for leave to file a reply in support of his request for certification to appeal”, filed on 17 August 2007, whereby the Defence of Ante Gotovina requests leave pursuant to Rule 126 *bis* for the “Defendant Ante Gotovina’s reply in support of his request for certification to appeal”, filed on 17 August 2007 (“Reply”);

RECALLING that the Trial Chamber remains seised of “Ivan Čermak’s and Mladen Markač’s joint motion to resolve conflict of interest regarding attorney Gregory Kehoe”, filed confidentially on 13 April 2007, whereby the Defence of Ivan Čermak and the Defence of Mladen Markač request the Trial Chamber:

¹ Motion, paras 3-4.

- 1) to order the the Prosecution to provide all relevant information on the alleged conflict of interest of Gregory Kehoe (“First Request”), and
- 2) to decide whether Gregory Kehoe has a conflict of interest in representing Ante Gotovina considering his prior involvement in the case and if so resolve it prior to the commencement of the trial (“Second Request”);

RECALLING AND REITERATING the Trial Chamber’s findings in the “Order to the Registrar regarding Gregory Kehoe’s appointment as Defence counsel for Ante Gotovina”, filed on 25 June 2007 (“Order to the Registrar”), that when the question of qualification of counsel is brought to the Trial Chamber’s attention because of an alleged conflict of interest, the Trial Chamber has the authority to determine whether such appointed counsel should be disqualified under its broad powers to ensure a fair trial and to safeguard the integrity of the proceedings;² that the Trial Chamber is seised of the matter;³ and that the Trial Chamber therefore is competent to review the “Decision of the Deputy Registrar”, filed on 7 April 2006, in order to assess whether the Registrar exercised his discretion correctly, or abused such discretion, by admitting Gregory Kehoe to represent Ante Gotovina, since the alleged conflict of interest may affect the integrity of the proceedings and impact the wider interests of justice;⁴

CONSIDERING that the Order to the Prosecution is limited to the provision of relevant material to the Trial Chamber for the exclusive purpose of enabling the Trial Chamber to determine whether Gregory Kehoe has a conflict of interest in representing Ante Gotovina, as per the First Request of the Motion, of which the Trial Chamber has found that it is seised;

CONSIDERING in this respect, that by the Order to the Prosecution the Trial Chamber postponed its determination of the Second Request;⁵

CONSIDERING the submissions of the Defence of Ante Gotovina that the Response “is of no value to the Trial Chamber and should be disregarded” because the arguments submitted in the Response “are completely irrelevant to the issue pending before the Trial Chamber, namely whether the requirements of Rule 73(B) have been met so as to justify an interlocutory appeal” and because

² Order to the Registrar, p. 5, referring to *Prosecutor v. Hadžihasanović et al.*, Case No. IT-01-47-PT, “Decision on Prosecution’s motion for review of the decision of the Registrar to assign Mr. Rodney Dixon as co-counsel to the Accused Kubura”, filed on 26 March 2002, para. 55; *Prosecutor v. Simić et al.*, “Decision on the Prosecution Motion to Resolve Conflict of Interest Regarding Attorney Borislav Pisarević”, Case No. IT-95-9-PT, filed on 25 March 1999, p. 6; *Prosecutor v. Gotovina et al.*, “Decision on Miroslav Šeparović’s Interlocutory Appeal Against Trial Chamber’s Decisions on Conflict of Interest and Finding of Misconduct”, Case No. IT-06-90-AR73.1, filed on 4 May 2007, para. 23. See also Order to the Prosecution concerning the alleged conflict of interest of attorney Gregory Kehoe, filed on 25 July 2007, pp 2-3.

³ Order to the Registrar, p. 5.

⁴ Order to the Registrar, pp 5-6.

“the ghostwriter for attorney’s Prodanovic, Slokovic, and Mikulicic makes no mention whatsoever of Rule 73(B) in his Consolidated Response or whether the requirements of Rule 73(B) have been satisfied”;⁶

CONSIDERING that while the Response does not make any explicit mention of Rule 73(B) and while the Response reiterates arguments in relation to the First Request, which the Trial Chamber has already decided, the Defence of Čermak and Markač make submissions in relation to the two arguments raised by the Defence of Ante Gotovina in support of certification of an interlocutory appeal pursuant to this provision and referred to above;

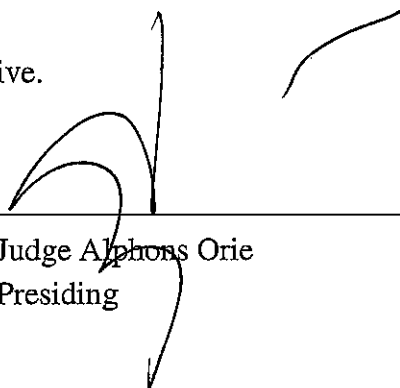
CONSIDERING Rule 73(B) of the Rules;

CONSIDERING that the Motion requests anticipatory relief in a matter which the Trial Chamber has yet to consider on its merits, and, therefore, that the Order to the Prosecution does not involve an issue that would affect the fair and expeditious conduct of these proceedings or the outcome of the trial;

PURSUANT TO Rule 73(B) of the Rules;

DENIES the Motion.

Done in English and French, the English version being authoritative.



Judge Alphons Orie
Presiding

Dated this eighteenth day of September 2007

At The Hague

The Netherlands

[Seal of the Tribunal]

⁵ Order to the Prosecution, p. 7.

⁶ Reply, para. 3.